

This letter provides a ruling on a contract regarding the cladding of windows for a construction contractor. See 86 Ill. Adm. Code 130.2140. (This is a PLR).

October 1, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of September 4, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to TAXPAYER for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither TAXPAYER nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

This letter is a follow-up letter to the Private Letter Ruling issued by the Department of Revenue ('Department') on June 20, 2001, to Taxpayer. Please view this letter as a request for a Private Letter Ruling or information letter as to the taxability of certain purchases by Taxpayer which are similar in nature to the purchase addressed in the Department's June 20, 2001 Private Letter Ruling.

As was explained in Taxpayers's earlier Private Letter Ruling request, as part of its business of constructing buildings, the Taxpayer purchases building cladding to cover the outside of buildings that it is constructing. While the Private Letter Ruling addressed the situation involving the purchase of this special order building cladding, in which the Taxpayer provides the window panes that are used by the service contractor to make the building cladding, other situations also arise. These situations involve the purchase of custom-made, special-order items which are part of the overall building's cladding system (i.e., building's outside layer). In this regard, Taxpayer requests the Department to verify that these purchases would likewise qualify as purchases subject to the Illinois Service Occupation Tax, and not the Illinois Retailers Occupation Tax.

The transactions at issue are as follows:

1. In certain situations, Taxpayer hires a service contractor to make a portion of the building's cladding, such as an aluminum curtain wall system, for a specific low-rise, medium-rise and high-rise building it is constructing. In these situations, the service contractor provides layout drawings and other engineering drawings, which details the construction of the curtain wall system, subject to architectural specs and construction

tolerances. The service contractor's licensed engineer will review and certify such drawings. After approval of the drawings, the service contractor will supply all materials, other than the window panes, and will engineer and construct the curtain wall system for the outside of the building.

The curtain wall system will be fully engineered and constructed by the service contractor, except for the placement of the window panes. Such system will then be shipped to Taxpayer, who will do the final assembly, inserting the window panes and then inserting the entire curtain wall system onto the building. These curtain walls would have no value to anyone other than Taxpayer, except for salvage value, and are expressly made for a specific location on a specific building. Moreover, these curtain walls cannot be ordered from any type of catalog and are not stock items, since no such stock items exist.

2. The second situation involves a similar purchase of custom-made, special-order items from a service contractor, again with respect to the outside cladding of a building. In this instance, custom-made metal panels to fit gaps between various curtain wall systems on the outside of a building will be contracted for by the Taxpayer. The service contractor making the metal panels takes the general architectural drawings supplied by Taxpayer, and then transforms them into shop drawings which coordinate the details of the panels with the curtain wall shop drawings. The metal panel drawings are done to specially make the panels conform to the tolerances and requirements of the building. Afterwards, these metal panels are shipped to the Taxpayer, who then installs them on the building as part of the overall cladding of the building. As with curtain wall systems, these metal panels make up a portion of the overall cladding of the building. They have no value to anyone but the Taxpayer, except for salvage or scrap value. These panels cannot be purchased from any catalog or from other dealers as a stock item.

3. Within the cladding of the building and curtain wall system, there may be balcony openings for the building. Taxpayer contracts with another service contractor which will engineer, fabricate and assemble the required balcony doors for Taxpayer. In this case, the glass panels that will be put in the doors are supplied by the Taxpayer. The service contractor takes the architectural drawings and the panels and then fabricates around such panels to make a special-order balcony door system. The service contractor will provide mock-up drawings, layout drawings and other detailed drawings to make sure the door designs meet and comply with Illinois law and the requirements of the building design. Again, in this situation the actual glass panels are provided by the Taxpayer and are inset within the fabricated balcony door system by the service contractor.

4. The last situation involves the purchase of special-order, custom-made louvered openings and panels for the cladding of the building. As part of the cladding of the building and curtain wall system, certain portions of the building's exterior need specially made louvered openings for circulation of air and other uses. In this situation, the service contractor fully engineers the louvers from architectural drawings supplied by Taxpayer. The special-order louvered openings are designed to meet the architectural drawing requirements and the tolerances required of the building. All drawings made by the service contractor require the service contractor to detail the louver system in combination with the curtain wall framing system to show a complete louver infill system. As with the other parts of the building cladding system, these are custom-made, special-order items for a specific building and a specific building opening. They have no

value to any other taxpayer other than as scrap or salvage value. Nor can you buy similar types of louvered opening infill systems as a stock item or from a catalog.

We believe the purchases stated above all should be taxed under the Service Occupation Tax and not the Retailers Occupation Tax. In each of these situations, the Taxpayer hired the various service contractors to engineer certain components of the outside layer of a building (i.e, the building's cladding), including the curtain wall system, the louver infill system, metal panel separators and the like. As the Department recognized in its Private Letter Ruling of June 20, 2001 to Taxpayer and in a Private Letter Ruling on August 4, 2000 to another taxpayer, when a purchaser hires a seller primarily for their engineering skills to produce property on special order, and the property has use or value only for the purpose for which it was produced, and has use or value only to the purchaser, it is an item purchased on special order subject to the Service Occupation Tax, and not the Retailer's Occupation Tax. ST 00-0017-PLR (8/4/2000); ST 01-0021-PLR (6/20/2001). This is also consistent with numerous court cases in this area, which have held that special-order items which are custom designed to serve a specific purpose and have no value to any other taxpayer, other than salvage or scrap value, are considered special-order items subject to the Service Occupation Tax. See J.H. Walters and Company vs. Department of Revenue, 44 Ill. 2d 95 (1969); Velten and Pulver, Inc. vs. Department of Revenue, 29 Ill. 2d 524 (1963); American Brake Shoe Company vs. Department of Revenue, 25 Ill. 2d 354 (1962); Prairie Tank and Construction Company vs. Department of Revenue, 49 Ill. App. 3d 291 (1977); Commonwealth Edison Company and Westinghouse Electric Corporation vs. Department of Revenue, 179 Ill. App. 3d 968 (1989).

Based on the above, we ask that you issue a Private Letter Ruling or information letter acknowledging that the above-stated transactions would be subject to the Service Occupation Tax and not the Retailers Occupation Tax. Thank you again for your time and consideration of this matter.

DEPARTMENT'S RESPONSE:

Based on the representation contained in your Private Letter Ruling request, we believe that TAXPAYER's purchases described in your letter are not considered sales at retail, but rather are considered sales of service with the transfer of tangible personal property (window cladding material) incident to that sale of service. Therefore, we believe that these transactions are subject to liability under the Service Occupation Tax Act. These determinations are specifically based on your representations, that in situations one, two, and four, the aluminum curtain walls, the custom-made metal panels, and the custom-made louvered opening and panels are created and engineered by the subcontractors and that these items have no value to anyone but TAXPAYER. These determinations are also based on your representation that these items cannot be purchased as stock items.

As for situation number three, we understand that the balcony doors described in your letter are glass balcony doors and that TAXPAYER is providing its own glass for these doors. The contractor is fabricating the remainder of the doors pursuant to architectural drawings provided by TAXPAYER. We believe that this is a transaction subject to liability under the Service Occupation Tax Act. However, if TAXPAYER was not using its own glass for the glass balcony doors, the Department would consider TAXPAYER to be purchasing a number of special order doors. In that case, TAXPAYER's supplier would be considered to be making a retail sale of doors because the

special order doors would be serving substantially the same function as a stock or standard doors sold at retail. See 86 Ill. Adm. Code 130.2140.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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TDC:msk
Enc.